IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :20.09.2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.8745 of 2014
& MP.No.1 of 2014

Southern Alloy Foundries (P) Ltd.,
No.149, GNT Road,
Ponnaiammanmedu Post,
Chennai 600 110,
rep by its Chairman S.Thiagharajan. .. Petitioner

vs

1. The State of Tamil Nadu, rep.by its
Secretary to Government,
Municipal Administration and Water
Supply (Election) Department,
Fort St., George, Chennai 600 009.

2. The Revenue Officer, (ARO-III)
Corporation of Chennai,
Chennai 600 003.

3. The Commissioner,
Madhavaram Municipality,
Chennai 600 051. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the demand notice of the 2nd respondent dated Nil for current demand and arrears demands of Rs.10,29,996/- towards vacant land tax from second half year 2009-10 vide Bill No.615 and to quash the same.

For Petitioner : Mr.R.Gandhi, Senior counsel for Mr.R.G.Narendran
For Respondents : Mr.R.S.Selvam
Government Advocate for R1

Mr.T.C.Gopalakrishnan for R2 & R3

O R D E R

The demand notice of the 2nd respondent for current demand and arrears demands of Rs.10,29,996/- towards vacant land tax from second half year 2009-10 vide Bill No.615 is under challenge in this writ petition.

2. The learned Senior Counsel appearing for the writ petitioner made a submission that the writ petitioner is an Industry. Previously, the petitioner premises was situated within the territorial jurisdiction of the erst-while Madhavaram Municipality. After amalgamation of the Madhavaram Municipality with the Greater Chennai Corporation, the premises belongs to the petitioner falls

within the jurisdiction of the Greater Chennai City Corporation.

3. The learned Senior Counsel referred the Government order issued in G.O.Ms.No.151, Municipal, Administration and Water Supply (Election) Department dated 20.08.2009 and stating that the tax on vacant lands is imposed under Tamil Nadu Town Panchayat Third Grade Municipalities and Municipal Corporations Levey of Property Tax on Vacant Land Rules, 2009, except Chennai Municipal Corporation. Thus, the property tax imposed in respect of the vacant land under the possession of the writ petitioner is erroneous, on account of the fact that the petitioner's premises is now situated within the territorial jurisdiction of the Greater Chennai Corporation. This apart, the writ petitioner is utilizing the entire area for industrial purposes and therefore, the same cannot be construed as a vacant land. Further, it is contended that the respondents have not properly assessed the property tax and the various facts and circumstances prevailing in the premises of the petitioner have not been taken into consideration for the purpose of assessing the property tax. Thus, the process adopted by the respondents in assessing the tax are improper.

4. The learned Senior Counsel further contended that there is no provision under the Chennai City Municipal Corporation Act, 1919 to impose tax on the vacant lands. In the absence of any such specific provisions under the Act, the respondents cannot impose property tax in respect of such vacant lands situated within the jurisdiction of Chennai City Municipal Corporation.

5. In view of the prohibitions imposed by way of Government Order and in the absence of any specific provisions under the Act, the vacant land tax imposed in respect of the vacant land belongs to the writ petitioner is untenable.

6. The learned counsel appearing on behalf of the respondent Corporation disputed all the contentions raised on behalf of the writ petitioner and strenuously contended that the said Government order referred by the learned Senior Counsel i.e., G.O.Ms. No.151 is applicable to the writ petitioner premises till the year 2011, from which the premises of the petitioner was brought under the jurisdiction of Chennai Corporation. Thus, the writ petitioner is liable to pay the vacant land property tax from the year 2011 i.e.,after the date of merger of the erst-while Madhavaram Municipality with the Chennai City Municipal Corporation. Secondly, it is contended that the Transit provision was enacted in Chennai Municipality Corporation Act, 1919. More specifically 414 (A) deals with Transitional provision on the extension of the area of the City:
414A. Transitional provision on the extension of the area of the city. - (1) When the area of the city is extended, all property, all rights of whatever kind, used, enjoyed or possessed by, and all interests of whatever kind owned by, or vested in, or held in trust by or for the municipal council, panchayat union council or villlage panchayat concerned, of the extended area as well as all liabilities legally subsisting against such municipal council, panchayat union council or village panchayat, as the case may be, on and from the date of the Notification, by which such extension of the city is declared, shall, subject to such directions as the Government may, by general or special order, give is this behalf, vest with the corporation.
(2) All arrears of taxes or other payments by way of composition for a tax, or due for expenses or compensation or otherewise, except such arrears or payments in respect of water supply and sewerage services, due to such municipal council, panchayat union council or village panchayat, as the case may be, on the date of such Notification, shall be recovered as if they had accrued to the corporation and shall be recovered as if such arrears or payments had become due under the provisions of this Act.
(3) All taxes, fees and duties, except in respect of water supply and sewerage services, which immediately before the date of such Notification, were being levied by such municipal council, panchayat union council or village panchayat, as the case may be, shall be deemed to have been levied by the corporation under the provisions of this Act and shall continue to be in force

accordingly until such taxes, fees and duties are revised, cancelled or superseded by, anything done or any action taken under this Act.
(4) All proceedings except in respect of water supply and sewerage services, taken by, or against such municipal council, panchayat union council or village panchayat or authority or any person under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) or the Tamil Nadu Panchyats Act, 1994 (Tamil Nadu Act 21 of 1994), as the case may be, shall be continued by, or against, the corporation, authority or person as if such proceedings had been commenced under the provisions of this Act.
(5) Any action except in respect of water supply and sewerage services, taken under the Tamil Nadu Act V of 1920 or the Tamil Nadu Act 21 of 1994, as the case may be, by any authority before the date of such Notification, shall be deemed to have been taken by the authority competent to take such action under this Act as if this Act had then been in force.
(6) Notwithstanding anything contained in this Act, every officer or employee except in connection with water supply and sewerage services, who, immediately before the date of such Notification, was in the service of such municipality, town panchayat or village panchayat, as the case may be, shall, on and from the date of such Notification, be deemed to be an officer or employee of the corporation:
Provided that-
(a) the terms and conditions applicable to such officer or employee consequent on his absorption in the service of the corporation shall not be less favourable than those applicable to such officer or employee immediately before the date of such Notification, as regards pay and allowances, leave, pension, gratuity, provident fund and age of superannuation; and
(b) the service rendered by such officer or employee under such municipality, town panchayat or village panchayat, as the case may be, upto the date of such Notification, shall be deemed to be the service under the corporation and he shall be entitled to count that service for the purpose of increments, leave, pension, provident fund and gratuity.

7. In view of the said provision cited supra, the Chennai City Corporation is entitled to recover the arrears of vacant land property tax from the assesse's concerned. This apart, the learned counsel appearing for the Chennai Corporation states that a resolution was passed on 29.10.2009, itself to impose property tax in respect of the vacant land within the jurisdiction of Chennai City. Therefore, the transitional provision cited above is squarely applies to the premises of the writ petitioner and the premises of the writ petitioner was added with the Chennai City Municipal Corporation in the year 2011. However, in the year 2009 itself, the vacant lands were incorporated for assessment of property tax within the Chennai City limits. In view of the transitional provision and in view of the resolution passed by the Council of Chennai Corporation, the vacant lands are also subjected for assessment of property tax to Chennai Corporation. It is further contended that the Chennai Municipal Corporation is governed by the Chennai City Municipal Corporation Act, 1919. Exemption granted by the Government in G.O.Ms.No.151, cannot be applied in respect of the petitioner premises after the year 2011, from which the premises belongs to the writ petitioner falls within the jurisdiction of the Chennai Corporation. However, even before the amalgamation of Madhavaram Municipality, the Council of Chennai Corporation has passed a resolution on 29.10.2009, including the vacant land for the purpose of payment of property tax. Thus, by applying the transitional provisions, the respondent Corporation is empowered to calculate the arrears of property tax throughout even after the year 2011.

8. The learned counsel appearing for the respondents further states the writ petitioner is a defaulter and he has not paid the property tax as assessed. In the event of any discrepancy in respect of the assessment, it is left open to the writ petitioner to prefer an appeal before the Commissioner / Appellate Authority under the provisions of the Chennai City Municipal Corporation Act, 1919 and thereafter, before the Taxation Appellate Tribunal and further appeal remedy is provided before the

Municipal Tax Cases, Principal District Judge, City Civil Court, Chennai. Thus, the three tier appeal provisions are provided under the provisions of the Chennai City Municipal Corporation Act, 1919. If any persons aggrieved in respect of the measurement or discrepancies or calculation of assessment of taxes, they are entitled to approach the appellate authority and the Tribunal in accordance with the provisions contemplated under law. Without exhausting the appeal remedy, the writ petition cannot be entertained directly in respect of the factual discrepancies and disputes.

9. The legal principles in this regard is that complex and disputed facts can never be adjudicated in a writ jurisdiction under Article 226 of the Constitution of India and such factual discrepancies and disputes are to be adjudicated by submitting the original documents and by adducing evidences before the competent forum. Such an exercise cannot be done in a writ jurisdiction. Therefore, the writ petitioner is at liberty to approach the appellate forums for the purpose of redressing his grievances in respect of the nature of the occupation, details of the buildings or otherwise, in respect of any such discrepancies now raised before this Court in the present writ petition.

10. However, by raising such disputes and keeping the writ petition for many years, the assesse cannot be permitted to avoid or evade the payment of property tax.

11. Payment of property tax is a duty of the citizen. Every citizen are utilizing common infrastructure facilities and amenities provided by the Greater Chennai Corporation. When the Citizens are utilizing all such common amenities provided by the State and the Corporation, they are bound to pay the property tax within the time stipulated. Non payment of property tax is to be construed as an infringement of right of all other citizens residing within the jurisdiction of Chennai city. In the event of utilising all such common facilities without paying the property tax, the assesse should remind himself that he is utilising all such amenities at the cost of other tax payers, who are all promptly paying the property tax. All responsible citizens should realize that they are not supposed to enjoy all such amenities and infrastructural facilities at the cost of other tax payers who are promptly paying the property tax. Thus, non-payment of property tax infringes the rights of all citizen who are residing within the jurisdiction of Chennai City. This being the principles to be adjudicated, the writ petitioner is liable to pay the assessed property tax. If there is any discrepancy in respect of certain factual aspects, the writ petitioner has to produce evidences by filing an appeal before the appellate authority for redressing the grievances. However, these factual disputes cannot be adjudicated in the present writ petition. Accordingly, the following orders are passed:

1.The relief as such sought for in this writ petition stands rejected.
2.The writ petition is directed to pay the entire arrears of property tax due of Rs.19,03,224/- within a period of four weeks from the date of receipt of a copy of this order.

12. In the event of not paying the arrears of property tax within the time limit stipulated above, the respondent Corporation is directed to initiate all further proceedings to recover the entire property tax arrears by following the procedures contemplated under law.

13. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

20.09.2018
sk/pns
Index:Yes
Internet:Yes
Speaking order

S.M.SUBRAMANIAM J.
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To
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Municipal Administration and Water
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